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REF: STATE 55422

¶1. The United States government is aware of two (2) claims of U.S. persons that may be outstanding against the Government of Bulgaria (GOB).

¶2. List is keyed according to reftel instructions.

A) Claimant A (ongoing case)

B) 2000

C) In 1999, Claimant A established a subsidiary, which purchased a controlling interest in a Bulgarian fertilizer company through the privatization process. The subsidiary was holder of the fertilizer company shares. Shortly after the privatization, the Russian partner in the subsidiary of Claimant A, through a scheme involving a bogus loan, acquired the fertilizer company shares from the subsidiary through another Cyprus-registered holding company, which he controlled.

The Russian partner -- without a power of attorney or any other authority from the claimant -- signed a loan agreement between the claimant's subsidiary (on behalf of the fertilizer company) and his separate holding company for $4 million to purchase pipes. When, as expected, the fertilizer company could not repay the loan, the holding company sued and gained control over claimant's subsidiary and therefore the fertilizer company. On August 30, 2000, the Vratsa Regional Court issued a decision regulating the transfer of 9,683,000 shares of the fertilizer company from the claimant's subsidiary to the Russian partner's holding company.

Shortly after the holding company took over the shares of the fertilizer company, the Privatization Agency agreed to sell the remaining 14 percent of the shares still held by the GOB to the holding company.

The claimant has since been caught in a legal dilemma in Bulgaria between the questions of jurisdiction and reciprocity. On one hand, the Bulgarian courts claimed that they did not have jurisdiction because the case is between two American registered companies. However, when the claimant won its case before the New York Supreme Court in June 2001, Bulgaria refused to recognize the New York court's decision because the United States and Bulgaria do not have a reciprocity agreement.

The Sofia City Court issued a decision on July 14, 2003, ordering the Cyprus-registered company to restore the above shares to the claimant. Further to an appeal submitted by the Cyprus-based company, on December 18, 2003, the Sofia Appellate Court overruled the Decision of the Sofia City Court.

Following the above Decision, the claimant submitted an appeal of cassation before the Supreme Court of Cassation (SCC), which was

heard by its Commercial Division (case No. 144/2004) on June 16, ¶2004. This is the highest court and its decision is final for all parties concerned. On September 10, 2004, a three-judge panel of the SCC upheld the decision of the Sofia Appellate Court. On March 8, 2005, a five-judge panel of the Supreme Court of Cassation issued its final decision and turned down yet another appeal.

In the meantime, a separate case in the Vratsa District Court went forward based on the claim of the Bulgarian state natural gas company BULGARGAZ and the Bulgarian state electrical company NEC for proclamation of declaring the fertilizer company insolvent. The court declared the fertilizer company insolvent on December 14, ¶2004.

Despite the court ruling, the Post-Privatization Agency (PPA) has initiated legal proceedings against the claimant for failing to meet commitments under the privatization contract. In addition, the PPA sent, on April 11, 2005, a letter requesting the claimant pay $7.4 million for non-performance under the privatization contract. Embassy asked the PPA to reconsider this in light of the Bulgarian Court's determination that claimant is not the owner of the plant. The director of the PPA responded that she found it very unusual that the privatization agreement allowed for 100% of the company shares to be transferred, while all liabilities for performance under the privatization agreement stayed with the buyer (IBE). We relayed this information to the attorney for IBE with the request to confirm. No response to this request has been received. The privatization agreement in fact allowed for the transfer of shares to third parties, while IBE retained all liabilities and responsibilities.

A) Claimant B (new case)

B) 1999

C) In 1999, through its daughter company, Claimant B started developing the Chelopech deposit on the grounds of a Contract for Granting Concession for Mining Underground Resources (Gold-Copper-Pyrite Ores from the Chelopech Deposit). The gold/copper mine at the time was sustaining financial losses and exhibiting low morale amongst its staff due to shortage of funds for mine upgrades. The implementation of the project will avoid the liquidation of the mine providing full-time employment to more than 860 people. Claimant B agreed to dedicate funds to developing municipal infrastructure and assist in improving municipal services. Consistent with the Investment Promotion Act and the Rules for its implementation, in February 2006 Claimant B received a Certificate for First-Class Investment. In this Canadian company, about 40 percent of the shares are held by U.S. companies and individuals.

In November 2005, Claimant B deposited with the Ministry of Environment and Waters (MoEW) an Environment Impact Assessment (EIA) statement done by an independent team of experts, followed by EIA public hearings held a month later. At the beginning of 2006, a date was set for a meeting of the Higher Council of Environmental Experts (HCEE) at the MoEW for consideration of EIA. The consideration, however, was postponed by MoEW which requested clarification of the issue regarding the hygiene protection belt around the tailings management facility. The MoEW minister Djevdet Chakarov argued his obstruction was based on his ambition to protect the state interest, as well as the opposition of some intellectuals against the further implementation of the project. In March 2006, HCEE reconvened and approved the EIA overwhelmingly (with 22 in favor and only 1 against). Instead of passing a resolution on the EIA, in April 2006 MoEW further delayed the procedure by asking the Ministry of Economy and Energy (MEE) to issue its opinion on the EIA, which was positive.

Again in March 2006, Claimant B filed an appeal against the MoEW's silent refusal to rule on the EIA. At the end of 2006, a three-member panel of the Supreme Administrative Court revoked the MoEW's silent refusal and returned the case to MoEW, obligating the minister to issue a resolution on the EIA, which the MoEW appealed against. In April 2007, a five-member panel of the Supreme Administrative Court re-confirmed its Resolution 10363/24.10.2006 as a final one. To date, the MoEW has not yet complied with the court resolution and has not passed a resolution on the EIA.

In 2006, the USG supported the Canadian Embassy's efforts to draw attention to the case, by pointing to it as an example of business climate deterioration and discussing it in meetings with AmCham. In early 2007, Ambassador Beyrle mentioned the case privately during meetings with high-level GOB officials. In 2007, representatives of Claimant B met with USG executives in Washington D.C. and Brussels.

The minister does not have any legal ground to obstruct the investment project, and the reason for his obstructive behavior is his attempts to mislead the court by pushing for a whole new EIA procedure and thus causing a further delay of Claimant's project operations.

¶3. Claimant reference list:
Claimant A: IBE Trade, U.S. Company
Claimant B: Dundee Precious Metals, Canadian-U.S. Company
BEYRLE